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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 182.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

LAWRENCE E. GANNON.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 26, 1885.

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1 *Declaration. Filed July* 14, 1881.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

The plaintiff sues the defendant, and complains that—

Whereas, on the day and date hereinafter mentioned and for a long time prior thereto, there was and still is a public highway in the city of Washington, in the said District, called Vermont avenue, which was and is used as such highway by the citizens of the United States to go, return, pass, and repass with coaches, chariots, and other carriages at their free will and pleasure; and

Whereas the said defendant was bound in law to maintain and keep the said highway in such condition as to render it entirely safe and convenient for the passage and transit aforesaid;

Yet, nevertheless, the plaintiff alleges that on or about the twenty-third day of April, 1881, and a long time previous thereto, the defendant wrongly and unjustly allowed and permitted three certain projections, commonly called and known as "man-traps," to be and remain in and upon the said highway—the said man-traps projecting several inches above the surface of the said street or avenue—by means of which said negligence of the defendant in this respect the hind wheel of the carriage of the plaintiff, with the plaintiff therein, was caught beneath one of the said projections, whereby the axle of the said carriage was broken; the same was overturned and
2 greatly damaged; the plaintiff was violently thrown therefrom and dragged a long distance along the surface of said street.

By means whereof he then and there became and was greatly hurt and bruised, cut and wounded, and remained sick for a long time, during which he suffered great bodily pain and inconvenience, and still at times suffers the same from the said injury. The plaintiff avers that at the time of said accident he was on his way to his home on S street northwest, in said city; that he was driving with great care and at moderate speed, and was in no manner guilty of or chargeable with any negligence.

The plaintiff claims five thousand dollars ($5,000) for his damages, and he therefore brings his suit, &c.

JOHN F. ENNIS,
Att'y for Pl'ff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after the service hereof; otherwise judgment.

J. F. E.,
Att'y for Pl'ff.

Summons. Issued July 14, 1881.

In the Supreme Court of the District of Columbia, the 14th day of July, 1881.

LAWRENCE E. GANNON, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } At Law. No. 22999.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the
3 first day of its first special term occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Ass't Clerk.

J. F. ENNIS, *Attorney.*

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

Marshal's Return.

Served copies of declaration, notice to plead, affidavit, and this summons on the defendant by service on Josiah Dent, Commissioner, the 14th day of July, 1881.

C. E. HENRY, *Marshal.*

Defendant's Plea. Filed August 13, 1881.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

The defendant for plea says that it is not guilty as alleged.

A. G. RIDDLE,
Att'y for Def't.

4 *Joinder of Issue. Filed October* 11, 1881.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

The plaintiff joins issue upon the defendant's plea.

JOHN F. ENNIS,
Att'y for Pl'ff.

Note of Issue. Filed October 11, 1881.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

Please calendar.
Last pleading filed Oct. 11, 1881.

J. F. ENNIS,
Att'y for Pl'ff.
FRANCIS MILLER,
Att'y for Def't.

To the clerk.

5 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court, commencing the third Monday, it being the 20th day, of October, A. D. 1884.

MONDAY, *October 20th, A. D.* 1884.

By order of Alexander B. Hagner, one of the justices of said supreme court presiding, the court is opened by proclamation of the marshal pursuant to rule of court.

* * * * * * *

MONDAY, *November 10th, A. D.* 1884.

Session resumed pursuant to adjournment, Hagner, justice, presiding.

* * * * * * *

LAWRENCE E. GANNON, Pl'ff,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } At Law. No. 22999. Cal. 42.

Now comes here as well the plaintiff, by his attorneys, Messrs. Henkle & Ellis, and a jury of good and lawful men of this District, to wit, Levi Woodbury, Edward J. O'Hare, Charles H. Joy, Thomas Paxton, Walter Z. Golibart, James F. Webster, Joseph Gawler, Charles H. Perry, Edward V. Rice, John F. Seitz, Franklin P. Mann, and James H. McGuigen, who, being duly sworn to try the issue above joined, after hearing a part of the evidence in the case, are respited until the meeting of the court to-morrow morning.

TUESDAY, *November 11th, A. D.* 1884.

Session resumed pursuant to adjournment, Hagner justice, presiding.

* * * * * * *

6 LAWRENCE E. GANNON, Pl'ff, vs. THE DISTRICT OF COLUMBIA, Def't. } At Law. No. 22999. Cal. 42.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, on their oath say that they find said issue in favor of the plaintiff and assess his damages by reason of the premises at the sum of five thousand dollars, besides costs.

And now comes the defendant, The District of Columbia, and moves the court to set aside the verdict herein and grant the defendant a new trial, and for reason assign the following:

1st. That the verdict is contrary to the evidence.

2nd. That the evidence adduced at the trial was insufficient to support the verdict.

3rd. That the damages awarded by the jury are excessive.

And now comes the defendant, by its attorney, and moves the court to set aside the verdict herein and grant a new trial on bills of exceptions duly taken by the defendant to errors of law committed by the justice presiding in his instructions to the jury.

And now comes the defendant, by its attorney, and makes this its motion on the minutes of the court in arrest of judgment on the verdict rendered herein, and in support thereof assigns the following: That there is no allegation that the District of Columbia had any notice of the cause of the injury complained of in said declaration.

7 SATURDAY, *January* 17, 1885.

Session resumed pursuant to adjournment, Hagner, justice, presiding.

* * * * * * *

LAWRENCE GANNON, use S. S. HENKLE, vs. THE DISTRICT OF COLUMBIA. } No. 22999.

Upon argument of defendant's motion in arrest of judgment and for a new trial, in this cause filed, it is considered by the court that the said motion be, and the same is hereby, overruled; and therefore it is considered further that the plaintiff do recover against the defendant five thousand dollars, being the money payable by the District of Columbia to the plaintiff by reason of the premises, and $43.00 for his cost of suit, and have execution therefor.

Appeal. Filed Jan. 22, 1885.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON vs. THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

And now comes the defendant, by its attorney, and enters this

its appeal to the general term of the supreme court of the District from the order of court overruling its motion for a new trial, made on the minutes of the court, on the ground that the verdict in this cause was contrary to the evidence; that the evidence pro-
8 duced at the trial was insufficient to support the verdict, and that the damages awarded by the jury were excessive; and also to the order of court overruling the defendant's motion in arrest of judgment, both of which said orders were made by the justice presiding in this cause on the 17th day of January, 1885, as will appear by the records of the court, the defendant's said appeal from the order overruling its motion for a new trial to be made on a case.

A. G. RIDDLE,
Attorney for Defendant.

Bill of Exceptions. Filed Jan'y 31, 1885.

In the Supreme Court of the District of Columbia.

LAWRENCE E. GANNON
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 22999.

Case and bill of exceptions.

Be it remembered that, at the trial of this case before Mr. Justice A. B. Hagner and a jury duly empanelled to try the issues between the plaintiff and defendant, the plaintiff, to maintain and prove the issues upon his part joined, offered and gave the following testimony and none other:

LAWRENCE E. GANNON, the plaintiff, and witness in his own behalf, being first duly sworn according to law, was examined and, in answer to interrogatories duly propounded to him by his counsel, testified as follows:

Have resided in the city about 20 years, and been in busi-
9 ness from nine to ten years in this city. On the evening of Saturday preceding Easter Sunday, 23rd of April, 1881, had been to St. Matthew's church, on the corner of 15th and H streets, and had been attending a meeting of the choir at the pastor's house—the first house east of the church. I had my boy bring my horse and a light wagon to take me home in order that I might get my supper early, as I wanted to go some place. I turned from H into 15th street and went up 15th to Vermont avenue, and in passing Vermont avenue at L street my wagon struck against one of the man-holes, the center man-hole—there are three man-holes at the intersection of the street—and the hind wheel snapped off at the axle and I was thrown from the wagon backwards and my hand caught in the reins as I was going over, and I was dragged about a hundred yards, as I judged afterwards. I suffered severely from it; was covered with blood. I was taken home by some persons whom I could not recollect—didn't recollect at the time. When I got home

my wife sent for Dr. Okie, who was our family physician at the time and attended me and my wife. The effect of the injury has been to impair my sight—I am rapidly losing the sight of my right eye—loss of memory and severe attacks of headache. At times when I have a press of business, which is that of a contractor, and have to make estimates and a good deal of figuring to do, and while figuring I am attacked with headaches, lasting 24 hours sometimes, and have applied very often to physicians for relief, but nothing seems to give me any relief. I was confined to the house for several weeks, but from time to time I have been called upon by physicians to prescribe for me. Prior to the accident my health was excellent and I enjoyed better health than most people; have had a good
10 deal of experience in driving and have been used to horses all my life. As I got to this place that night the gas lamp had not been lit; at the time I was driving at an ordinary rate and not exceeding anything that is contrary to law. It is very hard for me to estimate the amount of my expenses consequent upon the injuries. I was away from business for three weeks when I was confined to bed. I really could not estimate it. I had contracts with the Patent Office and other contracts which could not wait. I paid the doctors' bills, which were about $150 or more. I had a scar on the left side of my nose, in the center of my forehead, and over my left eye. I fell over my right shoulder with my hand on the rein; it got caught in the rein and I kind of turned over on my left side. Most of my injuries appeared to be on the left side. My eyesight before the accident was perfect; I had as good eyesight as anybody and never was troubled with writing at night, and now when using artificial light all the letters seem to run together.

The direct examination of said witness being concluded, on cross-examination he testified as follows, in answer to interrogatories duly propounded to him by defendant's attorney:

My present age is 41 and this accident happened three years ago; had owned the horse that I was driving about two years; it was a light gray horse; she was about nine or ten years of age; she was a mare and would go on quiet and well. At the time of the accident it was deep twilight; I could distinguish a man that night about twelve yards—that is, I could tell he was a man, but to recognize an acquaintance I could not distinguish him beyond ten feet. At that time my sight was remarkably good. I had driven over
11 that same street before the accident many times—more than a hundred and probably a thousand. I knew that these man-holes were there. I knew that they were in a bad condition, and knew that they were projecting. I tried to drive between them. The street is about 60 feet wide. I could not say whether there was forty feet on each side of these man-holes, between the man-holes and the curb-line, or not. I could have avoided the man-holes if there had been good light. I knew where they were; that they were about in the center of the street. I do not think the man-holes are in a row; I think that there is about twenty feet between the outside one and the sidewalk. If I had thought I could have avoided

them. That street was my way of going home. I avoided the man-holes in the day-time. If there was sufficient light I could have done it. I attempted to do so the best I could in driving that day. At the time I was driving along there the day of the accident I remembered that there were man-holes there; I did my best to avoid them. I did not sell the horse. I had had the buggy that I was driving in about a year; it was a light buggy; I sold the buggy. I think the forward wheel of the buggy struck the man-hole, although I would not like to swear to it. I was sitting on the right side of the buggy, which had a top and only one seat; the seat was fastened to the buggy, and I think it was as high as the small of the back, and had cushions. As soon as the hind wheel of the buggy struck the man-hole it broke off. I have driven across the railroad tracks—street railroad tracks—often with my buggy. I never broke down, and have struck them with some force. The turning over the buggy is what threw me out; the breaking of the one wheel necessarily turned the buggy over. I had the office boy with me, who
12 is about sixteen years old. He was thrown out over me. At the time of the accident I was not walking the horse; I was not more in a hurry than usual; I had somewhere else to go that night was the reason that I had the office boy to come for me in the buggy. The office boy's name is Henry Donovan. He left me about nearly two years ago, and after I commenced this suit. The last I heard of him he was in Cincinnati. I did not take his deposition. It was the overturning of the buggy that threw me out; it was not the breaking down, but simply the overturning of the buggy that threw me out. I think sometimes if a front wheel of a buggy should break off that the wagon might not turn over, but would be supported. In such a light wagon as the one I had when the hind wheel broke off the buggy turned over. The hind wheels of the buggy were the ordinary size. I should not think that they would be as high as five feet and a half. I could not say with certainty where my person first struck in coming in contact with the surface of the street. The fact, according to my theory, is that I struck upon the right side of my head, from the fact that my stiff hat that I wore was crushed in. My memory shortly after the accident is not very clear. I found my hat on my head when I got home. I certainly did not pick it up myself. I was not quite conscious—nor yet quite unconscious—of what was going on. I was dazed—obscured very much. I was driving and had the reins in my hand when this thing occurred. They got out of my hand and got onto one of my feet. As I fell over my feet went up. I could not say whether it was wound around or simply caught in my foot. The horse ran about a hundred yards and stopped; seemed to be frightened. I think my person became disengaged from the
13 lines while the horse was in motion, but I am not certain. I was drawn about forty yards—forty or fifty yards; the horse stopped at the corner of the alley near Mr. Taylor's residence. My memory is that he was standing there and somebody had hold of him. I was about the same weight then as I am now. I might have been a little heavier. I would be likely to fall very heavy with

my weight. I think my weight was about 180. I do not know what my present weight is. Since the accident I have had to wear glasses. It commenced about three months after, I think. Both eyes were not alike; the right eye is most injured—it was most affected. I have had some headaches on account of the accident. I have never made any examination of the place where the accident happened. Saturday was the day of the week on which the accident happened. Easter in the Catholic Church is a great festival. Easter Sunday was on the 24th, and this was on the Saturday preceding. I have the horse yet.

The cross-examination of said witness being concluded, on re-direct examination he testified as follows in answer to interrogatories duly propounded to him by the plaintiff's attorney:

This boy was with me at the time; was in attendance at the last term of the court for this case. He was then working in Philadelphia, and I had brought him here for that purpose; paid his expenses here, backwards and forwards. The street was improved within a very short time after this accident. I do not know what is below the surface of these man-holes; it may be water pipe.

WILLIAM T. OKIE, a witness produced on behalf of the plaintiff, being first duly sworn according to law, was examined, and, in answer to the interrogatories duly propounded to him by counsel for the plaintiff, testified as follows:

14 I am a practicing physician, and I have practiced in this city since 1877. I have been a practicing physician since 1861. At the time of the happening of this accident my residence and office was 515 12th street. I have been Mr. Gannon's physician ever since I have been in Washington. On the night of the accident I was called for between 8 and 9 o'clock, and went to Mr. Gannon's house, and found him sitting in his bed-room surrounded by his family, with his face bloody and black, where asphalt had been ground into it. He was talking incoherently and had symptoms of concussion of the brain. A reaction soon set in, and he had the ordinary features of a case of concussion of the brain. I continued to treat him from time to time. He didn't appear to get along very well. He would seem at times a great deal better, and then he would come to me and complain of a recurrence of the symptoms. He has suffered from headache, which has continued from time to time, and almost every time I have seen him he has been complaining. I have told him that a man of his physique and his weight falling as he did and having the symptoms that are recurring in his case, when blood is forced to the brain from mental exercise, that I doubted whether he would ever get in the condition that he was in prior to this injury. I made a very careful examination of him at the time. From this sudden fall he had an overplus of blood forced into the brain. There was no rupture of any of the blood vessels. Headache on his part is one of the results of the injury to him, and also vertigo—dizziness and vertigo. It is not unusual for apoplectic fits to follow an injury of that

kind. It makes a person more liable to apoplexy, and also paralysis. Mr. Gannon is a man of considerable neck and abundance of blood. After he once got out of the house I never went there to see him. At first he seemed to be very much worried,
15 and would come in to see me from time to time. In my judgment, the lesion of the brain has never healed, which is permanent in its character. I think the tendency is more liable toward its increasing than decreasing. The probabilities of its—the injuries—abridging life depend very much upon the occupation he may be engaged in. The danger to a man in his condition from eating heartily would be greater than a man in ordinary condition. The danger would be from a stroke of paralysis. In consequence of this brain concussion I think he has increased liability to attacks of sudden visitations of apoplexy and paralysis. I never attended Mr. Gannon for any sickness before this, except a cold or sore throat. The probabilities are that his vision will gradually grow worse. I think, in a man of over forty years of age, his vision is not likely to improve. I consider that his eyesight is permanently impaired. I have been attending his wife almost ever since I came to Washington, and I have seen Mr. Gannon during my visits to the house. From the injuries he was confined to the house two or three weeks, I think. He suffered considerably for the first few days after the accident. I think I got $150 from him. At the time, I was having some houses built. I got some things from him at the time. The fact is, I do not think I ever kept any account. I did for his wife, but, I think, from time to time I owed him a bill. I think I charged him from $125 to $150. I know that we settled, anyhow.

The direct examination of said witness being concluded, on cross-examination he testified as follows, in answer to interrogatories duly propounded to him by defendant's attorney:

To some extent the extent of the injury in Mr. Gannon's
16 case is due to his physical make-up. A slender man, in that respect, would not have suffered as much. Any mental strain causes an undue flow of blood to his brain and the cells are weakened, and it is because of that diseased condition of the cells—of the vessels—the danger in his case arises. I don't anticipate a recovery of those small vessels. I think that condition is fairly deducible from the injuries that he received. I think the last time he called my attention to his case was about ten days ago, when I met him near the Treasury Department and asked him about his health. He would see me on the street sometimes and I would ask him how he was getting along, and he would say, My eyesight is no better, or my headaches are bad, but I didn't pay much attention to it. Taking his health for the last six months and comparing it to the six months first after I ceased to visit him frequently, the only difference has been, he tells me, that his eyesight is worse. The principal thing that he complained of was his eyesight and of his having to wear glasses at times. The practical effect is that he cannot commit excesses with the same freedom now that he could before the accident.

Mr. FITZPATRICK, a witness produced on behalf of the plaintiff, being first duly sworn according to law, was examined, and, in answer to interrogatories duly propounded to him by counsel for the plaintiff, testified as follows:

During the last eight or ten years a part of the time I have been a contractor. I have done a good deal of work in paving streets.

17 I was here in court and heard the testimony in regard to the accident. I have examined the man-traps at the place spoken of. There was one, the large one, that was about six inches above the surface of the gravel, and the other one was not so deep; there were two of them in a direct line; the north one, then the large one, which set off westerly; that was the one that was so deep; the third one was a little to the eastwardly; the smaller ones were about two or three inches above the surface. I was requested to make a careful examination of them. I made a memorandum of it at the time of the measurement, but it has been so long since that I have forgotten where I put it, but I remembered the circumstances at the time. I have not been able to find this memorandum. I do not know how soon it was after this accident that I made the measurement. I have some knowledge of horses; have been an owner and driver of horses for many years. I drove Mr. Gannon's horse yesterday down to the Congressional burying ground; he loaned me the horse yesterday. It was not with any view of my trying the horse; but I had to lay out the work for the men down there, and I was obliged to be there at a certain time, and he let me have the use of his horse to go there and back. The cap, as it it called, is the cover to the man-hole; the cap is made of cast iron; the large one is about 18 inches; these three, I think, differed in size; I think the large one is over the main pipe.

The direct examination of said witness being concluded, on cross-examination he testified as follows in answers to interrogatories duly propounded to him by defendant's attorney:

I went there at the request of Mr. Ennis. He told me that he had a lawsuit on hand, or something to that effect. I do not know

18 that he wanted to bring this case. He asked me to look at these traps to see what I thought of them. He told me that some one was injured, but I did not know who the man was. He didn't give me anything for it. I went there in the day-time. I do not recollect what time in the year; it must have been over two years ago—two and a half, may be; I think it was in the summer. I did not make a measurement of the size of the tops, but I think one of them was larger than the others; that, I think, was the middle one. I measured the height that they were above the surface of the street; the larger one was about six inches above the surface of the street, where the wheels of wagons had probably worked the street down. I made a note of it at the time. I measured it with a two-foot rule. To my recollection, I did not give the measurement to Mr. Ennis; he was there at the time himself; there was nobody else there but us two; it may have been in the forenoon of the day.

I do not know what has become of that measurement. I thought I would be called as a witness in the lawsuit. I only measured the large one; I didn't measure the others, but they appeared to be not more than a couple of inches above the surface. The street around this large one had been worn away on the west side. I do not know how far the middle one, the large one, was from the curbstone. I did not take any note of that and didn't measure it. I think it leaned more to the west side of the street. I could not state whether there was plenty of room on the other side. I could not state whether there was 20 or 25 feet between the large one and the curbstone.

The cross-examination of said witness being completed, on redirect examination he testified as follows in answer to interrogatories duly propounded by plaintiff's attorney, Mr. Ennis:

19 You never said anything to me about payment of my services. I do not know whether there was or not a lawsuit pending at the time. I didn't ask and you didn't tell me; there was no word said about it. I never knew the gentleman that has this lawsuit until yesterday. I never exchanged a word with him.

JAMES S. EDWARDS, a witness produced on behalf of the plaintiff, being first duly sworn according to law, was examined, and, in answer to interrogatories duly propounded by the plaintiff's attorney, testified as follows:

I am a member of the bar and live on I street, between 2nd and 3rd. I am the owner and driver of horses. I have had experience about driving and drive out nearly every evening. I know the location of the accident. I know that there is a concrete pavement there and has been for a number of years. I know the condition of those caps at the corner of Vermont avenue and L street. I recollect that there were three or more man-holes at that locality. I noticed them particularly on account of their projecting above the street. I always use great care in driving about there, and regarded them as dangerous in driving. I always noticed them in driving; they were of such a character that I was careful always in driving by that locality to keep away from them as much as I could. I had noticed them in that condition two years, may be more. I recollect of hearing of this suit of Mr. Gannon's. I have not been able to say whether there was any change in the condition of that street or not since that time. I do not think that they were ever changed. I knew Mr. Gannon, and when I heard about the accident I spoke to him about it as a friend and asked him if it was a serious injury.

20 The direct examination of said witness being concluded, on cross-examination he testified as follows in answer to interrogatories duly propounded to him by defendant's attorney:

By Mr. RIDDLE:

On one occasion I had difficulty in avoiding them; the horse stumbled over one of them; they are in the middle of the street.

In going in and out of the city to the Soldiers' Home I have found difficulty in avoiding them. Occasionally I find myself in condition where it is difficult to avoid these man-holes. There is room enough at any time to pass on either side between these man-holes and the curbstone. I do not know that there is room for two or three teams to drive between them and the curbstone. That street must be nearly fifty feet wide. I do not think that they are in a row up and down Vermont avenue, but at different angles. On L street is a large water pipe, with which these man-holes connect. I lived in the locality of L street for a number of years, when that street was being dug up. I am pretty clear that those man-holes are not in a row, but a little out of a straight line; my recollection is that they are not parallel with the street. I should judge that they projected from two and a half to three inches from the surface. I could not say which one had the greatest projection. I could not state particularly when Mr. Gannon's accident was, but I recollect that it was some years ago—some two or three years back, I should judge. I do not know which one of them brought my horse down, but I know he struck on his knee and recovered himself.

The cross-examination of said witness being concluded, on redirect examination he testified as follows in answer to interrogatories propounded by plaintiff's attorney:

21 This was in the evening, before dark, on my way down from Soldiers' Home. This street is very much travelled. It was a great thoroughfare. The man-hole nearest the north was nearly on a line of L street, and the others were south of the line of L street; that is my recollection of them. I never examined them at all after the accident, but prior to it I noticed them as I passed up the street.

The redirect examination of said witness being concluded, on recross-examination he testified as follows in answer to the interrogatories duly propounded by defendant's attorney:

I am living on I street, between 2nd and 3rd, and have been living there since 1876. I generally drove from home, in going to the Soldiers' Home, up through 3d street and through K, striking Vermont avenue and going up Vermont avenue.

Thereupon the plaintiff, to further maintain the issues upon his part joined, offered and read in evidence the deposition of Lester A. Bartlett, duly taken, which was as follows:

The said witness, in answer to interrogatories duly propounded to him by the attorney for the plaintiff, on direct examination testified as follows:

I reside in New York city, and know the plaintiff. This is a suit for damages on account of injuries received from a fall on Vermont avenue. At the time of the accident I was coming down Vermont avenue in the opening of the evening, just after dusk, and I saw a carriage strike the top of a man-hole on Vermont avenue, because

it was so dark, until I got a little closer to him, then I saw it was Gannon. His face was all covered with blood. I saw the
22 carriage when it struck, and went up to it afterwards and saw how badly broken it was. I saw that the hind wheel had been broken off. The cause of the accident was the wheel striking the top of the man-hole, which was several inches above the surface. There were two, I think, or three man-holes there that had been above the surface for a good while. I oftentimes drive up and down Vermont avenue, and I had often noticed them. I could not tell exactly, but I should presume that they had been that way six months or a year. I could not say how soon after the accident the street was repaired, but I noticed on driving on Vermont avenue that they had lowered the man-holes so as to make it even with the street. You see the cap or top of the man-hole was higher than the surface, and when the carriage struck it, why it would either have to go over it or break. In his case it broke the axle. I should think he was dragged along from twenty to thirty feet, but I do not remember how far. He was driving at a trot, not at an unusual speed. It was just in the twilight, and was some time in April, 1881.

The direct examination of said witness being concluded, on cross-examination he testified as follows in answer to interrogatories duly propounded by defendant's attorney:

I made a little memorandum of the accident, at Gannon's request, some time after it occurred. I had never met him before the accident, which occurred on the 16th or 23d of April, or somewhere along there; he was driving up Vermont avenue when I was walking down. I suppose I was sixty feet from him when the wheel of the carriage struck the man-hole. I would not like to say which one it was that the carriage struck, because that is a point that I had not thought of, but I think it was the one on the west
23 side of the street. I know I looked at it next morning, but I looked more particularly to see how high it projected above the level of the street. At the time of the accident he was going up Vermont avenue. It struck the outer edge or line of the cap. It didn't strike it clear. A railroad track does not lie several inches above the surface. I was looking at the carriage and heard the crash, and went to see where it struck. I went and examined the buggy and saw where the axle broke off. These man-holes were apparent to every one who travels on the street in the day, but not in the night time, and anybody going along there and not thinking of the man-hole or knowing it to be there might likely drive over it. I knew that they were there, and could have avoided them if I were in the carriage. I never knew of anybody else striking a wheel on this man-hole, but I have oftentimes said to myself that I might have struck them in driving over them. I have driven around the streets of this city as much as any one, and I have struck a good many tops to man-holes when I knew, if I had stopped to think of it, they were there.

The testimony hereinbefore set out being all the testimony offered on behalf of the plaintiff, he, through his counsel, thereupon rested.

Whereupon the defendant, to maintain its issues on its part joined offered and gave the following testimony and none other:

DAVID E. MCCOUMB, a witness produced on behalf of defendant, being first duly sworn according to law, was examined, and, in answer to interrogatories duly propounded by defendant's attorney, testified as follows:

I am a civil engineer; am now in the employ of the District of Columbia, and have been for the last ten years. I am
24 an assistant engineer in the engineer department of the District. (Referring to diagram.) That diagram or plat shows correctly the intersection of Vermont avenue and L street north, showing the water stop-boxes and the man-hole top at that intersection. It was prepared by me in June, 1881—June 2nd. The scale is one inch to four feet; that shows the location of the water boxes in the man-holes. It shows the height of the water stop-boxes in the man-hole top above the pavement, as they then stood, then existed, which was in June, 1881. These water stop-boxes are iron boxes in circular form, which support the earth to prevent it from caving in on the valve, so that it can be reached at any time. The main pipe runs on L street, running east and west, and these man-holes or traps connect with the water pipe. They are water stop-boxes connecting with the water main. The stop-boxes are about 18 inches in diameter. At the time of the making of this plat I took the levels around these boxes at different points, between the top of each of these water boxes and the surface, at four points around the perimeter of the top; on the north side of this water stop-box the iron of the cover projected one and one-eighth inches above the pavement; on the south side of this box it projected one and one-quarter inches above the surface; on the east side it projected one and one-quarter inches above the surface, and on the west side it projected one and three-eighths, making the maximum of the projection on the west side—that is, the middle one of those water stop-boxes. The marks indicated on the plat show correctly the measurement, the projection of the water stop-boxes at the different points indicated on the plat above the
25 pavement. The four points lying around the boxes at which the levels are taken were immediately adjacent to the water boxes. I took the height of the other boxes, and marked them on the plat. On the plat the boxes are numbered A, B, and C; A being the most northerly one, B the middle, and C the most southerly one. The width of Vermont avenue, from curb to curb, is fifty feet, and the width of L — is thirty-two feet. Two of these boxes are within a space that is common to the two streets. The middle box falls within the line of L street. It is eight and a half feet north of the south curb line of L street if that was projected across Vermont avenue. The iron pipes lead from the surface down to the water main. The pipe is iron and the cover is iron. I do not know the construction of those pipes or those covers. The tops of them, so far

as I can see, show that they are constructed like all other boxes. On the west side of this box the difference between the surface of the street and the top of it is one inch and three-eighths. In laying railroad tracks the object is to have the top of the rails on a level with the pavement. They usually lay what is called a T rail, and the side of that rail is below the grade of the street. The top of it is supposed to be flush with the top of the street, and it is usually so, as an average. Of course, sometimes it may be above and sometimes a little below. I remember the time when that street was resurfaced by the District. It was some time after I made this examination. I do not remember the time, but it was some time after I made this measurement that the street was resurfaced. The street was resurfaced from the circle, near the Portland, down midway of the square between K and L streets; that would include the place of the accident. My impression is that the resurfacing began on
the north, towards the north end of the Portland, connected
26 with the pavement that was put down around the circle—
Thomas circle—and ran south on Vermont avenue to the square between K and L. The middle box is a little out of a line, of a right line of the other two. It deflects about three feet. There will be twenty and a half feet clear space between the middle box and the curb line, and between the east side of that box and the east curb line of the avenue would be 29 and a half feet. No; it would be 20 and a half on the west side and twenty-eight feet on the east side. (Map here offered in evidence.)

The defendant here offered in evidence a plat made by the said witness McCoumb of the street where the accident happened, showing location of man-holes, &c., which is hereto attached and made a part hereof, marked Exhibit "A."

The direct examination of said witness being completed, on cross-examination he testified as follows in answer to interrogatories duly propounded by plaintiff's attorney:

I was directed by the Engineer Commissioner to make the measurements. I didn't ask him for what purpose it was done. I do not remember whether I found out before or after that that an accident had happened. I cannot say whether I knew at the time that I went there to make this map it was made with reference to the question of the liability of the District. I could not say that I had that in my mind at the time. I did know it afterwards, that there was a suit against the District. These projections are called water stop-boxes. I took the level from the top of the iron box to the surface of the street—the surface right around the box. I do not think, as a matter of fact, that there was a depression of the surface immediately right around these boxes. I have never noticed about
27 the different streets that the surfaces around these man-holes
were depressed. I do not believe that it is a fact. I took my measurements at the points which would give a fair average of the height of the boxes above surface. I took levels of all the boxes. The north box on the north side projected one inch; on the south, seven-eighths of an inch; on the west side, one inch; and on the

east side, — inch. The other one projected on the north side one inch; on the east side, one and three-quarter inches; on the south side, five-eighths of an inch; and on the west side, one and three-eighths inches. The most southerly box was south of the curb line of L street, and the most northerly was a little south of the center of L street. Between the center box and the north box is eleven feet, and between the center box and the south box is eleven feet and six inches. If there had been any filling in of the surface around the boxes between the time of the accident and the 2nd day of June, when I made the plat, it would have shown at the time of my examination. At the time I made the examination I could see the binders of the old pavement sticking out, which was homogeneous in its character, giving the same appearance as coal-tar. It is possible that the boxes might have been lowered without my knowing it. I do not say that it was not done. There is a possibility of its having been done without my noticing it.

The cross-examination of said witness being concluded, the said witness, in answer to interrogatories duly propounded by defendant's attorney on redirect examination, testified as follows:

It is possible that it could have been done without breaking up the pavement around them, but it would have been a very ex-
28 pensive job. The water main is an iron pipe, and the bottom of this stop water pipe is connected with it. A man could do it by chiseling the pipe and lowering it down. There is a possibility of that being done. It might be done without changing the face of the surface. It would be a very hard job and expensive job, and take a good deal of time to do it. So far as I saw, there was no indication of any such thing having been done.

The redirect examination of said witness being concluded, on recross-examination by attorney for plaintiff, he testified as follows in answer to interrogatories duly propounded:

I was not looking for such indications, but I think I would have noticed them if that had been done. They might have been lowered between the months of March and June, but not in the usual manner. If they were lowered out of the ordinary manner it might have been done without my knowing it.

The recross-examination of said witness being concluded, in answer to further questions propounded by attorney for defendant he testified as follows:

I never heard of such a job. It would be a special job performed for such a service as indicated, and would have to be done surreptitiously, and cost a good deal of money.

After the giving of the last above set out testimony by said witness, in answer to further interrogatories propounded by plaintiff's *testimony* he testified as follows:

My impression is that the street was resurfaced, after the accident,

in the succeeding fall. The pavement is usually laid down after the boxes are settled. The pavement is usually placed a little above the top of the boxes, so as to provide for the wear of the pavement, and when the pavement has sufficiently worn away below
29 the boxes the street is generally resurfaced. The pavements are usually crammed down a little by the boxes, and when the top surface wears off the new pavement is put down in the same manner. This street was resurfaced because the whole surface of the street was worn away, as I recollect it.

WILLIAM A. WALLACE, a witness produced on behalf of defendant, being first duly sworn according to law, was examined, and, in answer to interrogatories duly propounded to him by counsel for the defendant, testifies as follows:

I am in the service of the District and have been since 1871. I am inspector. I have to inspect streets after the pavement is finished; inspect streets when it is necessary to see that the work is properly done; answer all communications referred to me in relation to claims and damages. In this case I had a paper referred to me and reported on it. I made my examination soon after the date of the receipt of the complaint. (Showing witness paper.) That is the report I made under date of May 23, 1884; it was made either the same day or the day after I made the examination. I went there to see the condition of the street. I found that the asphalt pavement was in very good condition, and that the highest projection of these boxes was a little over an inch above the asphalt pavement. I do not think the highest one of them was of a height sufficient to cause an obstruction. I had a rule with me at the time I made the measurement; in making the measurement I used the rule.

The direct examination of said witness being concluded, on cross-examination by plaintiff's attorney he testified as follows in answer to interrogatories duly propounded:

30 It was in reference to this accident that I went there to report. I went to report whether the Commissioners regarded themselves as liable or not. I went to report to the Commissioners the fact with regard to the accident. I am still in the service of the District. I never saw Mr. Gannon until I saw him in this court. If I stated in my report that I saw Mr. Gannon and he was seriously hurt it was a fact and I had forgotten it; I do not remember now to have seen him.

JOSEPH C. ROCK, a witness produced on behalf of the defendant, being first duly sworn according to law, was examined, and, in answer to interrogatories duly propounded to him by counsel for the defendant, testified as follows:

Direct examination by Mr. RIDDLE:

Chief clerk of the engineer's department, and have been employed in the District service and in connection with the engineer's depart-

ment since 1871. Under the direction of the Engineer Commissioner, I have charge of the papers of the engineer's office and records. Vermont avenue from between K and L to the Portland was resurfaced in the month of December, 1881; the measurement for the work was made December 10th, 1881. There is nothing in the records of the office to show exactly when the work was commenced, but I know that it was not commenced earlier than the month of November, 1881; it was not done between the 16th of April and the 23rd of May or the 1st of June. I have examined the records and I have no knowledge whatever of any work having been done at the intersection of Vermont avenue and L streets during the
31 year 1881, prior to November; this I state after full examination of the record and the report of the repairs of pavements.

The direct examination of said witness being concluded, on cross-examination, in answer to the interrogatories propounded by plaintiff's attorney, he testified as follows:

I am still in the employ of the government of the District.

IRWIN MULLICAN, a witness produced on behalf of the defendant, being first duly sworn according to law, was examined, and, in answer to interrogatories propounded by defendant's attorney, he testifies as follows:

I am chief clerk of the water department of the District. My office is the bureau that has charge of the water works and the distribution of the same, &c., in the city limits. The water main on L street was laid under direction of the United States Government, under act of Congress. Those water stop-boxes and pipes were placed there by the United States Government. I have not any knowledge that these stop-boxes have been changed during the summer and spring of 1881.

The direct examination of said witness being concluded, on cross-examination, in answer to interrogatories propounded by plaintiff's attorney, he testified as follows:

I am still in the service of the District government. The District authorities have control of these boxes with reference to their repair on the street. They may lower or elevate them at pleasure.

After the giving of the above testimony on behalf of the defendant, the defendant, to further maintain and prove the issues upon his part joined, offered and read in evidence the following letter, addressed by the plaintiff to the Commissioners of the District of Co-
32 lumbia, the signature to which by the plaintiff was admitted. The said letter is in the words and figures following:

WASHINGTON, D. C., *May* 16, 1881.

Hon. Commissioners of the District of Columbia.

GENTLEMEN: On the 16th ultimo, about 7 o'clock p. m., it being dusk, I was driving at an ordinary speed from St. Matthew's church

to my residence, on 15th and S streets. When I reached the intersection of Vermont avenue and L streets the rear wheel of my light wagon struck the cover of one of the three man-holes situated at this corner, all of which project above the surface of the road pavement, and the rim of the wheel sliding upon the periphery of the cover forced the rim under the wagon, snapping the axle off close to the hub, thereby letting the vehicle down in the rear and throwing me violently to the pavement upon my head. The reins caught in my foot as I fell, and before I was extracted I had been dragged between forty and fifty feet, face downwards.

From this accident I suffered severely and still bear the marks upon my face. Aside from this, my life was endangered, and solely, as I believe, on account of the man-hole cover being raised above the pavement. I also suffered pecuniarily from inability to attend to business, having been absent from my office for two weeks, during which time I had the medical attendance of Dr. W. T. Okie. The anxiety of my family was an additional hardship forced upon me.

Under these circumstances I believe I am entitled to just
33 compensation from the District of Columbia for the injuries received, and pray that your honorable body will grant relief at the earliest moment convenient.

Very respectfully, L. E. GANNON.

Personally appears before me, John J. Linney, a notary public in and for the District of Columbia, Lawrence E. Gannon, who swears to the truthfulness of the foregoing statement and subscribes to the same this 17th day of May, A. D. 1881.

JOHN J. LINNEY, [SEAL.]
Notary Public.

After giving the above letter in evidence the defendant, to further maintain and prove the issues on its part joined, offered and read in evidence the following letter, already identified by the witness Wallace.

ENGINEER DEPARTMENT, DISTRICT OF COLUMBIA,
WASHINGTON, *May 23rd*, 1881.

To the engineer, D. C.

SIR: In reference to communication No. 1461, Vol. "A," engineer department, 1881, I have the honor to report that I saw Mr. Gannon, who appears to have been badly hurt while passing down Vermont avenue at the intersection of L street, where the breaking of his buggy took place.

The 36-inch water main was laid in L street by the Government. At the intersection of L street and Vermont avenue there were placed by the Government three stop-cock boxes 18 inches in diameter and
20 feet apart, lengthwise on Vermont avenue, from half to
34 one inch above the concrete of the roadway of the intersection, with no rim around to hold the wheel of a vehicle passing over them, covers of boxes securely fastened upon them, with a space

of roadway on either side of the boxes and curbing from 25 to 27 feet. The boxes and roadway were in good condition at the time of the accident.

The axle-tree of Mr. Gannon's buggy may have been broken while passing over these boxes. It does not appear that it was the fault or neglect of this office that caused the accident.

Very respectfully, W. F. WALLACE,
Inspector Engineer Dep't.

The above being all the testimony offered on behalf of the defendant it here rested.

Whereupon the plaintiff, in rebuttal, offered and gave the following testimony and none other:

LAWRENCE E. GANNON, the plaintiff, and witness in his own behalf, was here recalled in rebuttal, and, in answer to the interrogatories duly propounded by his counsel, testified as follows:

There is an apparent conflict between my testimony on yesterday and statement in the paper which has just been read with regard to the distance which I was dragged over the ground. I dictated the letter to a stenographer, Mr. Linney, who wrote it out, and there must have been some mistake made in the statement in getting it up. I was dragged forty or fifty yards, as near as I can recollect.

35 The direct examination of said witness being completed, on cross-examination, in answer to interrogatories duly propounded by defendant's attorney, he testified as follows:

I heard Mr. Bartlett, in his deposition read this morning, state that it was about twenty feet that I was dragged. I read this letter and swore to it before a notary. I do not have any explanation to make of the fact that I swore yesterday that the buggy was overturned, and I did not say so in the letter. I have no hesitation in repeating what I swore to yesterday, that the buggy was overturned.

The testimony last above set out of the plaintiff was all the testimony offered by him in rebuttal, and the testimony on both sides being closed, and all the testimony given in the case being herein set out, the defendant, by its attorney, requested the justice presiding to grant the following instruction to the jury:

"The defendant requests the court to instruct the jury—

"1st. That if the plaintiff had full notice of the position and condition of the stop-box referred to it was his duty to have avoided driving over it; that if in the reasonable care he could have avoided it and did not he cannot recover in this case."

Which the justice presiding granted.

After the granting of said instruction to the jury by the justice presiding, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instructions to the jury:

"If the jury find that with reasonable care the plaintiff could not

have avoided the man-hole referred to, and that there was
36 no defect in the plaintiff's carriage contributing to the accident, and find the other necessary questions in favor of the plaintiff, they will then consider what amount of damage he is entitled to."

"The jury is instructed that the rule for estimating damages is that of fair compensation for the injury described in the declaration, such as any and all persons would be entitled to; that he cannot recover anything for injury arising in part from any peculiar physical organization of his person proved on the trial.

"The rule of care on the part of the defendant as to him and the rule of compensation is the same as to all other persons."

But the court refused to grant said instruction and so instruct the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, which was for the plaintiff in the sum of $5,000, and the defendant requests the court to sign, seal, and enroll this its first bill of exception, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this the 30th day of January, 1885.

[Seal Supreme Court of the District of Columbia.]

A. B. HAGNER, *Justice.*

After the signing, sealing, enrolling, and making a part of the record the defendant's first bill of exception and all the testimony given on behalf of the plaintiff and defendant as the defendant's case, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instruction to the jury:

"That if from all the proved conditions and circumstances attending the accident complained of it shall appear as probable to the jury that the axle-tree of the plaintiff's carriage was defective and that defect contributed to the accident, he cannot recover in this case."

But the court refused to grant said instruction and so instruct the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its second bill of exception, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this the 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making a part of the record the defendant's second bill of exception, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instruction to the jury:

37 "The present government of the District of Columbia having been imposed upon the people of the District

without any power or opportunity on the part of said people to accept or reject the same, the District cannot be held responsible for the negligence of said government."

But the court refused to grant said instruction and so instructed the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its third bill of exception, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this the 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making a part of the record the defendant's third bill of exception, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instruction to the jury:

"The District of Columbia, under the form of government existing at the time of the accident which is the subject-matter of this suit, is not liable for damages resulting from said accident."

But the court refused to grant said instruction and so instruct the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception
38 was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its fourth bill of exception, according to the form of the statute in such case made and provided, aad it is accordingly done, now for then, this 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making a part of the record the defendant's fourth bill of exception, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instruction to the jury:

"If the care of the streets of the city of Washington, as a public duty, is imposed by the statutes upon the District of Columbia, the performance of which is for the general benefit, and the District derives no profit from it, then no action can be maintained against the District for damages resulting from a neglect to perform such public duty."

But the court refused to grant said instruction and so instruct the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its fifth bill of exception, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making a part of
39 the record the defendant's fifth bill of exception, which is made a part hereof, the defendant, by its attorney, further requested the court to grant the following instruction to the jury:

"The present form of government of the District of Columbia, consisting, as it does, of officers who are all appointed and paid by the United States, without any power to levy taxes or expend money except as directed by Congress, is not of such a character as to make the District responsible in damages for any negligence of those officers."

But the court refused to grant said instruction and so instruct the jury. To the refusal of the court so to instruct the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its sixth bill of exceptions, according to the form of the statute in such case made and provided, and it is accordingly done the 30th day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making a part of the record the defendant's sixth bill of exceptions, which is made a part hereof, the court, of its own motion, instructed the jury as follows:

"If the jury shall find from the evidence that at the time of the accident the stop-box against which the carriage is said to have struck was so improperly constructed or maintained that it projected
40 so far above the pavement adjacent as to render the street there unsafe or dangerou sfor the passage of carriages and other vehicles along or across the same when driven at moderate speed, and shall further find that the plaintiff's carriage, while he was driving the same with proper care and at moderate speed and without negligence on his part, came in contact with the said stop-box and was thereby broken and the plaintiff was thrown therefrom and injured, the plaintiff is entitled to recover such sum as damages as the jury shall believe will fairly compensate him for the personal injury and bodily suffering sustained and endured by him from said accident."

To the granting of said instruction to the jury by the court the defendant, by its attorney, then and there excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requests the court to sign, seal, and enroll this its seventh bill of exceptions, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the signing, sealing, enrolling, and making part of the record the defendant's seventh bill of exceptions, which is made a part hereof, the court, of its own motion, further instructed the jury as follows, in lieu of the third prayer of the defendant:

"The jury is instructed that the rule for estimating damages in

this case is that of fair compensation to the plaintiff for the injury described in the declaration, and that the sum allowed (if the jury should find a verdict for the plaintiff) should only be such
41 as will be allowed to any other person sustaining similar injuries. The plaintiff is not entitled to recover any greater sum because of any injury accruing to him from any peculiar physical organization, if the jury should find such fact was proved at the trial."

To the granting of said instructions by the court the defendant, by its attorney, then and there excepted, which exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant requested the court to sign, seal, and enroll and make a part of the record this its eighth bill of exceptions, according to the form of the statute in such case made and provided, which is accordingly done, now for then, this the 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

After the granting of said instructions and the noting of the different exceptions on behalf of defendant, as hereinbefore set out, the jury retired to consider of their verdict, which, upon consideration, they found for the plaintiff in the sum of $5,000; whereupon, and within the time allowed by the rules of court, the defendant, by its attorney, filed the following motion to set aside the verdict and grant the defendant a new trial:

1st. That the verdict is contrary to the evidence.

2d. That the evidence produced at the trial was insufficient to support the verdict.

3d. That the damages awarded by the jury are excessive.

And also a motion for a new trial on bills of exceptions duly taken by the defendant to errors of law committed by the justice presiding in his instructions to the jury.

42 And the defendant further filed the following motion, within the time allowed by the rules of court, in arrest of judgment on the ground that there is no allegation that the District of Columbia had any notice of the cause of injury complained of in said declaration.

Which said several motions will more fully and at large appear on the records of said court.

After the filing of said motion for a new trial, on the grounds first herein set out, and the filing of said motion in arrest of judgment, and on, to wit, on the 17th day of January, 1885, the said motions were overruled; from which ruling of the court the defendant duly noted an appeal to the general term.

And because the matters and things herein set out do not appear of record, the defendant, by its attorney, requests the justice presiding to sign, seal, enroll, and make a part of the record this its case and bills of exceptions, according to the form of the statute in such case made and provided, which is accordingly done, now for then, this the 31st day of January, 1885.

A. B. HAGNER, *Justice.* [SEAL.]

MONDAY, *April* 27, 1885.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the fourth Monday, 27th day, of April, 1885.

Present: Chief Justice Carter and Justices Wylie and James.

* * * * * * *

THURSDAY, *May* 28, 1885.

Session resumed pursuant to adjournment.

Present: Justices Cox, James, and Merrick.

* * * * * * *

43 LAWRENCE E. GANNON, Plaintiff, } At Law. No. 22999.
vs.
THE DISTRICT OF COLUMBIA, Defendant. }

Now come here as well the plaintiff as the defendant, by their respective attorneys; whereupon, because it appears to the court here that there is no error in the record and proceedings or in the judgment of the special term, it is considered that the said judgment be, and it is hereby, affirmed, with costs, to be taxed by the clerk, and that the plaintiff have execution thereof.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Lawrence E. Gannon and the District of Columbia, being cause No. 22999, at law, a manifest error hath happened, to the great damage of the said District of Columbia, as by its complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 22 day of September, in the year of our Lord 1885, and of the Independence of the United States the one hundred and tenth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To Lawrence E. Gannon:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the District of Columbia is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Chief Justice.

Service acknowledged Sept. 23d, 1885.

S. S. HENKLE,
Att'y for Pl't'ff.

45 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 17 day of October, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 17 day of Oct., 1885.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing

certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 17 day of October, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: District of Columbia supreme court. No. 182. The District of Columbia, plaintiff in error, *vs.* Lawrence E. Gannon. Filed October 26, 1885.

Supreme Court of the U. S.

THE DISTRICT OF COLUMBIA

vs.

LAWRENCE E. GANNON.

No. ~~1180.~~ 182

ON MOTION TO DISMISS WRIT OF ERROR.

BRIEF OF COUNSEL FOR DEF'T IN ERROR.

STATEMENT OF THE CASE.

The suit was brought in the Supreme Court of the District of Columbia by the Defendant in Error, Lawrence E. Gannon, against the District of Columbia to recover damages for injuries which the said Gannon claimed to have sustained by reason of his being thrown from his carriage on Vermont avenue, in the city of Washington, on the 23rd day of April, 1881. The accident was occasioned by the striking of the wheel of the carriage in which Gannon was riding against a stop-box covering a man-hole, which projected above the surface of the street. The jury found for the plaintiff below and assessed his damages at $5,000.

The defendant below filed a motion for a new trial upon several grounds, which was overruled, and a judgment entered for the plaintiff for the amount of the verdict, whereupon the defendant below appealed to the Court in General Term, which, upon hearing, affirmed the judgment of the Special Term. The writ of error in this court is brought to reverse said judgment. The judgment of the Court in General Term was May 28, 1885. The case was docketed in this court October 1885.

The motion to dismiss is based upon the Act of Congress approved March 25, 1885, entitled, "An Act Regulating Appeals from the Supreme Court of the District of Columbia and the Supreme Courts of the Several Territories." 23 Stats. L., 443.

> SEC. 1. That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or the Supreme Court of any of the territories of the United States unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.
>
> SEC. 2. That the preceding section shall not apply to any case wherein is involved the *validity* of any patent or copy-rights, or, in which is drawn in question the *validity* of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

This court has several times decided that interest cannot be included in making up the amount necessary to give jurisdiction upon appeal and in error.

Walker v. U. S., 4 Wall., 164.
Knapp v. Banks, 2 How., 73.
Western Union Tel. Co. v. Rogers, 93 U. S., 565.

The amount of the judgment, then being just $5,000 no writ of error will lie to this court, unless it be predicated of one of the questions provided for in the second section of the Act. In which event it may be brought here without reference to the value in dispute.

The excepted cases are:

1. Any case wherein is involved the *validity* of any patent or copy-right.

2. Any case in which is drawn in question the *validity* of a treaty or statute of the United States.

3. Or the *validity* of any authority exercised under the United States.

We take it, the only matter to be discussed upon the motion to dismiss is, whether any one of the foregoing questions was necessarily involved in determination of the case.

QUESTIONS IN THE RECORD.

Defendant's motion for new trial on the following grounds:

1. That the verdict is contrary to the evidence.

2. That the evidence was insufficient to support the verdict.

3. That the damages awarded by the jury are excessive. This motion was overruled.

The defendant also moved in arrest of judgment for the reason, that there is no allegation that the District of Columbia had any notice of the cause of injury complained of in the declaration. This was also overruled.

Certainly there is nothing in either of these rulings to bring the case within the 2nd Section of the Act of March 26th, 1885.

We believe it is conceded by the plaintiff in error, that the only questions brought up by the writ of error

are those arising out of the rejected prayers set out in the record.

The first two of said prayers are as follows, viz:

> 1. "The present government of the District of Columbia having been imposed upon the people of the District without any power or opportunity on the part of said people to accept or reject the same; the District cannot be held responsible for the negligence of the government."
>
> 2. "The District of Columbia, under the form of government existing at the time of the accident, which is the subject matter of this suit is not liable for damages resulting from said action."

The gist of the two foregoing prayers is that, because the present Government of the District of Columbia was provided by Congress, and the people living here had no power to either accept or reject it; therefore, the municipal government is not responsible for either its acts of omission or commission.

It is true that the form of government of the District has been several times changed by Congress, but no act providing a government for the District was ever submitted to the people inhabiting the District for their approval; and in this regard the present municipal government in no wise differs from its predecessors.

Under the Constitution of the United States the inhabitants of the District could not exercise any power either to accept or reject any form of municipal government which Congress might provide.

By Article 1, Section 8, of the Constitution, Congress is charged with the "exercise of exclusive legislation in all cases whatsoever" over the District of Columbia.

It was not contemplated that the inhabitants of the District should have anything to do with the formation

of the local govertment or with legislation for it; that was confided exclusively to Congress.

But the "validity" of the act creating the present government of the District is not "drawn in question" in the foregoing prayers.

> 3. "If the care of the streets of the city of Washington as a public duty is imposed by the Statutes upon the District of Columbia, the performance of which is for the general benefit, and the District derives no profit from it, then no action can be maintained against the District for damages resulting from a neglect to perform such duty."

This prayer requires of the jury to find 1st whether the care of the streets of the city of Washington was a public duty imposed by the Statutes upon the District of Columbia. 2nd. That the performance of it was for the general benefit and 3rd. that the District derives no benefit from it. Then they are told that if these things are so, no action can be maintained against the District for damages resulting from a neglect to perform such public duty.

The jury are not told how they are to find out these things, and there is nothing in the record to enable them to, and when they have found it, they are not told what their verdict should be, but are simply instructed that no action would lie.

What the "Statutes" are, which the jury is to construe, they are not informed; but at all events it is no where hinted that the "statutes," whatever they may be, are "*invalid*."

> 4. "The present form of government of the District of Columbia consisting as it does of officers who are all appointed and paid by the United States, without any power to levy taxes or expend

> money except as directed by Congress, is not of such a character as to make the District responsible in damages for any negligence of those officers."

There is nothing in the record to show that all the officers of the District Government are appointed by the United States, and the fact is, that none of them are appointed by the United States. Some of them are appointed by the President, but most of them are appointed by the Commissioners.

The Commissioners levy taxes to meet appropriations made by Congress. But, certainly these facts would not exempt the corporation from liability for failing to do the duty that the law charges it with.

The prayer does not undertake to question the "validity" of any act of Congress. It simply denies the liability of the District to suits for negligence by reason of the provisions of valid acts of Congress which create the municipality.

The prayers are all obnoxious to the objection that they are mere abstract propositions, and it was not error to overrule them for that reason.

They are each fatally faulty for other reasons which have been suggested. But if they were all proper in both form and substance, neither one of them undertakes to question the *validity* of any act of Congress; but on the contrary, the validity of each act of Congress refered to is assumed. If this be so, there is no possible ground upon which the writ of error in this case can be sustained, unless it involves the *validity* of the "*exercise*" of "an authority of the United States."

Certainly this cannot be claimed.

The Acts of Congress providing for the municipal government of the District, charge the Commission-

ers with the duty of taking care of the streets and sidewalks of the city of Washington, and the simple question is whether the District, like any other municipality, is liable in an action for damages for injuries sustained by an individual in consequence of the failure of the Commissioners to keep the streets of the city in safe condition.

That the duty is imposed by law, and that the laws imposing it are *valid*, are not questioned. But it is claimed that because these laws do not eminate from the inhabitants of the District, or have not been formally accepted by them, and because Congress makes the appropriations for the expenditures of the District government—one half of which are paid by the United States —that the municipal government is not liable to an action for damages for any injury sustained in consequence of its failure to discharge a duty imposed upon it by law.

Here is no question as to the "*validity*" of "*an authority exercised under the United States*, but simply whether an action will lie for injuries occasioned by a failure to discharge a duty required by *valid* laws creating a municipal government for the District of Columbia.

By no conceivable stretch of construction can the question of the liability of the District government to an action for failure to keep the streets of Washington in repair, be brought within the provisions of the 2nd section of the act of March 26, 1885, regulating appeals from the Supreme Court of the District of Columbia, &c.

If the District may come into this court in this case under the Statute, it is simply because the power and duties of the District government are created by acts of Congress and the right of appeal would not be limited to actions for negligence. If the right of appeal exists, it